United States Court of Appeals
for the
District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1207. 158

JOHN D. BOERING AND MEARLIN G. BOERING, HIS WIFE,
APPELLANTS,

vs.

CHESAPEAKE BEACH RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 16, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

No. 1207.

JOHN D. BOERING AND MEARLIN G. BOERING, HIS WIFE,
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vs.

CHESAPEAKE BEACH RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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26 UNITED STATES OF AMERICA, } *ss:*
District of Columbia,

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 25, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 44219, at law, wherein John D. Boering *et ux.* are plaintiffs and The Chesapeake Beach Railway Company is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 16th day of April, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1207. John D. Boering *et al.*, appellants, *vs.* Chesapeake Beach Railway Company. Court of Appeals, District of Columbia. Filed Apr. 16, 1902. Robert Willett, clerk.

In the Court of Appeals of the District of Columbia

JOHN D. BOERING ET AL., Appellants,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY.
No. 1207.

a Supreme Court of the District of Columbia.

JOHN D. BOERING and MEARLIN G. BOERING,
His Wife, Plaintiffs,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY,
Defendant.
No. 44219. At Law.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed October 16, 1900.

In the Supreme Court of the District of Columbia.

JOHN D. BOERING and MEARLIN G. BOERING,
His Wife, Plaintiffs,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY,
Defendant.
At Law. No. 44219.

The plaintiffs sue the defendant, The Chesapeake Beach Railway Company, for that heretofore and before the happening of the grievances hereinafter mentioned the defendant was, and still is, a corporation operating a steam railway for the purpose of carrying passengers for hire from the District of Columbia to Chesapeake Beach, in the State of Maryland, and from the said Chesapeake Beach to the said District of Columbia, and that on or about the second day of September, 1900, at about 10 o'clock p. m., the female plaintiff herein, Mearlin G. Boering, was lawfully, as a passenger for hire, upon one of the trains operated by said defendant between Chesapeake Beach and the said District of Columbia, and which said train was approaching the depot of the said defendant in or near

the said District of Columbia, and that then and there it became the duty of the defendant, its servants and employees, so to operate and control its said train and its tracks, switches, and other appliances as to carry safely the said female complainant to her destination in the said District of Columbia, yet nevertheless, at or about the time aforesaid, the defendant, its servants and employees, so carelessly and negligently operated the
2 said train and the said tracks, switches, and other appliances
at or near its said depot, as aforesaid, that said train, while going at a fast rate of speed, to wit, about twelve miles an hour, left the main track and ran through an open switch into a siding near the said depot, upon which siding were other trains and cars, and that said train upon which the said female plaintiff was riding violently collided with the cars upon said siding, as aforesaid, whereby and by reason of which negligence and the said collision the plaintiff was thrown violently upon the floor of the car in which she was riding, and was then and there sever*al*ly bruised, hurt, and injured, to wit, her shoulders, body, back, head, and limbs, and her nervous system was then and there shocked, disordered, and impaired, and her ovaries bruised and contused and she was otherwise internally and permanently injured, and she became and was rendered sick, sore, lame, and nervously disordered and has so remained for a long space of time, to wit, from thence hitherto, and the said female plaintiff has, during the time aforesaid, suffered great pain of body and mind and will continue to suffer great pain of body and mind, and she has been permanently injured in her bodily health and strength, to the damage of the plaintiffs in the sum of $15,000. Wherefore they bring this suit and claim the sum of $15,000 damages, besides costs.

And for a second and further cause of action the plaintiffs sue the defendant, The Chesapeake Beach Railway Company, for that heretofore and before the happening of the grievances hereinafter mentioned the defendant was and still is a corporation operating a steam railway for the purpose of carrying passengers for hire from the District of Columbia to Chesapeake Beach, in the State of
3 Maryland, and from the said Chesapeake Beach to the said
District of Columbia, and that on or about the second day of September, 1900, at about 10 o'clock p. m., the female plaintiff herein, Mearlin G. Boering, was lawfully a passenger at the invitation of the defendant on one of the trains operated by said defendant between Chesapeake Beach and the said District of Columbia, and which said train was approaching the depot of the said defendant in or near the said District of Columbia, and that then and there it became the duty of the defendants, its servants and employees, so to operate and control its said train and its tracks, switches, and other appliances as to carry safely the said female complainant to her destination in the said District of Columbia, yet nevertheless, at or about the time aforesaid, the defendant, its servants and employees, so grossly, carelessly, and negligently operated the said train and the said tracks, switches, and other appliances at or near its said depot, as aforesaid,

that the said train while going at a fast rate of speed, to wit, about twelve miles an hour, left the main track and ran through an open switch into a siding near the said depot, upon which siding were other trains and cars, and that said train upon which the said female plaintiff was riding violently collided with the cars upon said siding, as aforesaid, whereby and by reason of said gross negligence and said collision the plaintiff was thrown violently upon the floor of the car in which she was riding, and was then and there severely bruised, hurt, and injured, to wit, her shoulders, body, back, head, and limbs, and her nervous system was then and there shocked, disordered, and impaired and her ovaries bruised and contused, and she was otherwise internally and permanently injured, and she became and was rendered sick, sore, lame, and nervously disordered, and has so remained for a long space of time, to wit, 4 from thence hitherto, and the said female plaintiff has during the time aforesaid suffered great pain of body and mind, and will continue to suffer great pain of body and mind, and she has been permanently injured in her bodily health and strength, to the damage of the plaintiffs in the sum of $15,000. Wherefore they bring this suit and claim the sum of $15,000 damages, besides costs.

EUGENE CARUSI & SONS,
Attorneys for Plaintiffs.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

EUGENE CARUSI & SONS,
Attorneys for Plaintiffs.

Pleas.

Filed November 7, 1900.

In the Supreme Court of the District of Columbia, the — Day of November, A. D. 1900.

JOHN D. BOERING and MEARLIN G. BOERING,
His Wife, Plaintiffs,
vs.
THE CHESAPEAKE BEACH RAILWAY COMPANY.
} At Law. No. 44219.

5 The defendant for plea to the first count of plaintiff's declaration filed herein says that upon the occasion referred to therein the female plaintiff, Mearlin G. Boering, was not a passenger for hire upon a train operated by the defendant, as alleged.

And for further plea to said first count of plaintiff's declaration defendant says that it is not guilty, as alleged.

And for further plea to the second count of plaintiff's declaration defendant says that the female plaintiff, Mearlin G. Boering, upon the occasion referred to therein was not a passenger at the invitation of the defendant upon a train operated by the defendant, as alleged.

And for further plea to said second count of plaintiff's said declaration defendant says that it is not guilty, as alleged.

And for further plea to both counts of plaintiff's said declaration defendant says that at the time of the occurrences therein referred to the female plaintiff, Mearlin G. Boering, if she was upon a train of the defendant company at all, was riding thereon by virtue of the possession of a free pass, which pass was issued to and accepted by said female plaintiff as a mere gratuity and upon the condition, which was printed upon the back thereof, that the person accepting and using the same assumed all risks of accidents and damage to person or property, whether caused by negligence of defendant company's agents or otherwise.

F. D. McKENNEY,
Attorney for Defendant.

6 *Joinder of Issue.*

Filed November 13, 1900.

In the Supreme Court of the District of Columbia.

JOHN D. BOERING and MEARLIN G. BOERING, His Wife, Plaintiffs,
vs.
THE CHESAPEAKE BEACH RAILWAY Company, Defendant.
} At Law. No. 44219.

The plaintiffs join issue upon the defendant's first and second pleas of the first count of the declaration.

And the plaintiffs join issue upon the defendant's first and second pleas in the second count of the declaration.

EUGENE CARUSI & SONS,
Attorneys for Plaintiffs.

Motion to Strike Out.

Filed November 13, 1900.

In the Supreme Court of the District of Columbia.

JOHN D. BOERING and MEARLIN G. BOERING, His Wife, Plaintiffs,
vs.
THE CHESAPEAKE BEACH RAILWAY Company, Defendant.
} At Law. No. 44219.

Now come the plaintiffs, by their attorneys, Eugene Carusi & Sons, and move the court to strike out the further plea of 7 the defendant to both counts of the plaintiff's declaration, on the ground that said plea is argumentative, hypothetical, alternative, uncertain, and does not give color.

EUGENE CARUSI & SONS,
Attorneys for Plaintiffs.

Memorandum.

November 16, 1902.—Further plea to 1st and 2nd counts of declaration stricken out, with leave to defendant to plead in 10 days.

Amended Plea.

Filed November 26, 1900.

In the Supreme Court of the District of Columbia, the — Day of November, A. D. 1900.

JOHN D. BOERING and MEARLIN G. BOERING, His Wife, *vs.* THE CHESAPEAKE BEACH RAILWAY COMPANY.	At Law.	No. 44219.

The defendant, by leave of the court, withdraws the third plea heretofore filed by it to the first and second counts of the plaintiffs' declaration and in lieu thereof substitutes the following, to wit:

8 And for a further and third plea to said first count of plaintiffs' said declaration the defendant says that at the time of the occurrences therein referred to the female plaintiff, Mearlin G. Boering, was not "lawfully a passenger for hire," as in said count alleged, but was riding upon a passenger train of said defendant upon and by virtue of a free pass which had been issued and given to said female plaintiff and accepted by her as a mere gratuity, and without any consideration having been received from her therefor, and upon the following conditions and agreements plainly printed in legible type upon the back thereof, to wit:

"Not transferable.

"The person accepting and using this pass thereby assumes all risk of accident and damage to person or property, whether caused by negligence of the company's agents or otherwise.

"If presented by any other than the individual named therein, conductor will take up pass and collect fare."

And for a further and third plea to said second count of plaintiffs' said declaration the defendant says that at the time of the occurrence therein referred to the female plaintiff, Mearlin G. Boering, was not "lawfully a passenger at the invitation of the defendant," as in said second count alleged, but was riding upon a passenger train of said defendant upon and by virtue of a free pass which had been issued and given to said female plaintiff and accepted by her as a mere gratuity, and without any consideration having been received from her therefor, and upon the following conditions and agreements plainly printed in legible type upon the back thereof, to wit:

9 "Not transferable.

"The person accepting and using this pass thereby assumes all risk of accident and damage to person or property, whether caused by negligence of the company's agents or otherwise.

"If presented by any other than the individual named therein conductor will take up pass and collect fare."

F. D. McKENNEY,
Attorney for Defendant.

Demurrer.

Filed November 30, 1900.

In the Supreme Court of the District of Columbia.

John D. Boering and Mearlin G. Boering, His Wife,
vs.
The Chesapeake Beach Railway Company.
} At Law. No. 44219.

The plaintiffs say the defendant's amended plea to the first count of the plaintiffs' declaration is bad in substance.

EUGENE CARUSI & SONS,
Attorneys for Plaintiffs.

10 Note that the matter of law intended to be argued is that a common carrier of passengers cannot exempt itself from liability to persons traveling on a free pass by any stipulation against its own negligence.

The plaintiffs say that the defendant's amended plea to the second count of the plaintiff's declaration is bad in substance.

EUGENE CARUSI AND SONS,
Attorneys for Plaintiffs.

Note that the matter of law intended to be argued is that a common carrier of passengers cannot exempt itself from liability to persons traveling on a free pass by any stipulation against its own gross negligence.

Joinder of Issue, &c.

Filed December 28, 1900.

In the Supreme Court of the District of Columbia.

John D. Boering and Maerlin G. Boering, His Wife, Plaintiffs,
vs.
Chesapeake Beach Railway Company, Defendant.
} At Law. No. 44219.

The plaintiffs join issue upon the defendant's amended third plea to the first count of the plaintiffs' declaration.

11 And the plaintiffs join issue upon the defendant's amended third plea to the second count of the plaintiffs' declaration.

EUGENE CARUSI & SONS,
Attorneys for Plaintiffs.

Memorandum.

December 28, 1902.—Demurrer to amended pleas overruled.

Memorandum.

February 24, 1902.—Verdict for defendant.

Supreme Court of the District of Columbia.

MONDAY, *March 3rd*, 1902.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

JOHN D. BOERING and MEARLIN G. BOERLING, His Wife, Plaintiffs,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY, Defendants.
No. 44219. At Law.

12 It appearing that a motion for a new trial has not been filed herein within the time prescribed by rule, judgment on verdict is ordered. Therefore it is considered and adjudged that the plaintiffs take nothing by this suit, that the defendant go hereof without day and recover of the plaintiffs its costs of defense, to be taxed by the clerk, and have execution thereof.

From the aforegoing judgment the plaintiffs, by their attorneys, in open court, note an appeal to the Court of Appeals of the District of Columbia, and pray that a bond for costs be fixed. Thereupon it is ordered that said plaintiffs shall file herein a bond for costs on said appeal in the sum of one hundred ($100.00) dollars, with leave to deposit fifty ($50.00) dollars in the registry of this court in lieu of such bond; said bond to be with surety or sureties to be approved by this court.

Memoranda.

March 15, 1902.—$50 deposited in lieu of appeal bond.
March 26, 1902.—Time to settle exceptions extended 38 days.

13 Supreme Court of the District of Columbia.

MONDAY, *April 7th*, 1902.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

JOHN D. BOERING and MARLIN G. BOERING,
Plaintiff-,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY,
Defendant.
} No. 44219. At Law.

Now again come here the plaintiffs herein, by their attorneys, Messrs. Carusi & Sons and Merilatt, and tender to the court their bill of exceptions taken during the trial of this cause, and pray that it may be duly signed, sealed, and made part of the record, now for then, which is done accordingly.

14 *Bill of Exceptions.*

Filed April 7, 1902.

In the Supreme Court of the District of Columbia.

JOHN D. BOERING and MEARLIN G. BOERING,
Plaintiffs,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY.
} At Law. No. 44219.

Be it remembered that the above-entitled cause came on for trial on the 17th day of February, A. D. 1902, before Mr. Justice Clabaugh and a jury, Messrs. Eugene Carusi and Sons and Charles H. Merillat appearing on behalf of the plaintiffs, and Messrs. F. D. McKenney and J. S. Flannery appearing on behalf of the defendant.

And thereupon the plaintiffs, to maintain the issues upon their part joined, gave evidence by the following witnesses, tending to prove as follows:

MEARLIN G. BOERING testified that she, her husband, and a friend, Mr. Burke, went to Chesapeake Beach on Sept. 2, 1900, on the cars of the Chesapeake Beach Railway Company, and returned on said railway the evening of the same day. As the train came into Chesapeake junction there was a sudden collision, and she was thrown forward from her seat into the aisle, where she was trampled on by several other passengers and suffered severe injuries, from which injuries she still suffers.

JOHN D. BOERING testified in corroboration of his wife being in the accident and being injured. He was advertising solic-
15 itor and superintendent for Moxley bill-posting service.

Dr. WADE H. ATKINSON testified that he was called to attend Mrs. Boering about midnight after the accident. She was seriously injured.

Officer RICKETTS and Lieut. DALEY, of the police department, testified that the accident occurred just over the District line, at Chesapeake junction, and was due to a passenger train running into a train of empty coaches on an open switch.

Martin Walters and Charles Daley, who were standing on the station platform waiting for the train to come in, gave evidence tending to prove that there were no lights on the switch or any switchman there at the time of the accident; that the switch was usually locked by the "captain" of the train that came in and used the switch, and that the switch was open when the passenger train came in.

W. A. Riordan, a former railroad employé for 18 years, testified that he was on the passenger train, and that immediately after the collision he made an examination, found the train had run into empty coaches on a siding; that the switch was open and that there were neither lights nor a switchman about the switch, and that it was usual and customary to have either a light or switchman at railroad yard sidings such as this one was.

Mrs. Boering was recalled at the request of the defendants, who called upon plaintiffs' counsel to produce a pass in Mrs. Boering's name pursuant to notice given, and in response to further questions evidence was given by Mrs. Boering as follows:

Q. Where did you buy your ticket, if at all, that morning?

16 A. I didn't buy any ticket at all; Mr. Boering attended to my transportation.

Q. Did he buy a ticket for you that morning? A. No.

Mr. Merillat. We object.

The Court: I think that is a competent question.

By Mr. McKenney:

Q. You were riding with Mr. Boering on the train? A. Yes, sir.

Q. Where were you when the conductor came along for the tickets? A. In the seat with Mr. Boering.

Q. Did you see your husband present anything to the conductor as representing your right to ride? A. I saw him present them cards, and also another ticket.

Q. What was the other? A. A bought ticket.

Q. For whom was that? A. For Mr. Burke; I suppose it was for him.

Q. You saw your husband present two cards to the conductor that were not tickets? A. I saw him give the transportation to the conductor.

Q. Had you ever seen those cards before? A. Yes, sir.

Q. Was this one of the cards he gave to the conductor? A. I don't know; but I know I saw them cards after the accident.

17 Q. Had you ever seen them before the accident? A. No, sir.

Q. Did they look like this card?

Mr. Carusi, Jr.: We object to any further questions on this line.

The Court: Remember that Mr. McKenney is cross-examining this witness. These are preliminary questions that do not go to the real merits of the case at all.

By Mr. McKenney:

Q. You say that you were sitting in the seat with your husband when the conductor came along? A. Yes, sir.

Q. Did you notice Mr. Boering present two cards and a ticket? A. Yes, sir; he bought a ticket.

Q. You say you do not know whether this is one of the cards or not? A. Well, I seen him handle the cards. He had them entered in a book, and he reached up to the conductor like that (indicating). The conductor didn't take them in his hands.

Q. The conductor looked at them? A. Yes, sir.

Q. Was this one of the cards he looked at? A. Yes, sir.

Q. This card bears your name, does it not? A. Yes, sir.

Mr. McKenney: Now, if your honor please, I offer this pass in evidence as the token by virtue of the production of which the plaintiff in the case was riding on that train at that time.

18 The Court: Now the question arises.

Mr. Carusi, Jr.: Your honor, we object to the introduction of that pass in evidence. The pass, as you will observe, was made out to Mrs. J. D. Boering, but was not signed by her, nor is it stated by the witness, in reply to questions, that she ever saw it or read it and consequently that she ever saw or read what appears on the back of it. The condition on the back of the pass is one exempting the railroad company from any liability that may be sustained by the person travelling on its road with this card, whether caused by negligence of the company's agents or otherwise. We say that it is absolutely immaterial to the right of the plaintiff to recover whether or not the plaintiff was riding upon a free pass, a free pass with stipulations on the back of it, or any kind of transportation; whether she paid her fare or was merely upon the train in any capacity other than as a trespasser, when another question might arise. We say also that no foundation has been laid here by showing that even if she had ridden on a pass she knew the conditions thereof and assented to them.

* * * * * * *

Plaintiffs' counsel noted an exception on the grounds stated heretofore by Mr. Carusi, of counsel.

The pass, which was then and there read in evidence to the jury, was as follows:

Front.

Chesapeake Beach railway. 1900.

Pass Mrs. J. D. Boering. Complimentary. Until December 31st, unless otherwise ordered.

Not good unless countersigned by—
A. H. LEWIS.

OTTO MEARS, *President*.

A. H. LEWIS.
No. C. 1539.

19 Back.

Not transferable.

The person accepting and using this pass thereby assumes all risk of accident and damage to person or property, whether caused by negligence of the company's agents or otherwise.

If presented by any other than the individual named thereon, the conductor will take up pass and collect fare.

J. D. Boering thereupon was recalled to the stand by plaintiffs' counsel and gave evidence tending to prove that at the same time the pass for Mrs. Boering was given him there were given to witness four other passes, two being to Mr. Shoemaker, general manager of the Moxley advertising service, and Mrs. Shoemaker; one to Mr. Edwards, the Baltimore agent of the advertising service; and one to Mr. J. D. Boering, one of the parties named as plaintiff in this action, all being issued at the same time and pursuant to the same conversation with General Passenger Agent Lewis, of the Chesapeake Beach Railway Company. Plaintiff thereupon offered in evidence the pass issued to J. D. Boering at the same time the pass issued in the name of Mrs. J. D. Boering was given to him.

Defense objected that it was *res inter alios*. The objection was overruled, and the pass then read in evidence. It was identical with the pass issued to Mrs. Boering, except that its number was 1538, that it read "Pass Mr. J. D. Boering," and that in place of the word "complimentary" were the words "Acc. adv. contract Moxley ad. service."

Further evidence was given by Mr. Boering as follows:

20 By Mr. Carusi, Jr.:

Q. Mr. Boering, when you and Mrs. Boering were in the car and the conductor came by for the pass, who gave the pass to the conductor? A. I did.

Mr. McKenney: I object. Of what consequence is that?
Mr. Carusi, Jr.: It is simply a matter of inducement.

Q. What was it you gave the conductor? You say you paid the fare. How did you pay it? A. I paid it—I don't know that I understand fully the sense of your question—how I paid it.

Q. You handed tickets to the conductor; what were the tickets? A. Transportation for three people.

Q. Who procured that transportation? A. I did.

Q. From whom did you procure it? A. From Mr. Lewis, the passenger agent of the Chesapeake Beach Railway Company.

Q. As to the transportation you handed to the conductor, what was the character of it? A. Transportation for myself and wife, and one was a ticket I procured the evening of going to the beach.

Q. Did you ever show that transportation to the plaintiff in this case before the time when you and she were on the train together? A. I did not. It was such a matter that I thought it was immaterial to her.

Q. Did you tell her that you had procured passes? A. I told her I had procured transportation.

21 Q. Did you tell her under what circumstances? A. In conjunction with the contract of advertising.

By Mr. McKENNEY:

Q. Had you and Mrs. Boering ever been to Chesapeake Beach before September 2? A. Yes, sir.

Q. She had accompanied you down there during the preceding summer? A. Yes, sir.

Q. Had you used this same transportation on those trips? A. Yes, sir.

Q. How frequently had that happened? A. I can't recall that.

Q. About how many times? A. I don't know.

In answer to further questions, witness testified that he never had left the pass with his wife at any time, and that it always had been kept in his (witness') pocket.

Redirect examination.

By Mr. MERILLAT:

Q. Mr. Boering, did Mrs. Boering ever see the conditions on the back of this ticket prior to the time of the accident—the ticket that was made out in her name?

Mr. McKENNEY: That seems to me to be immaterial. Your honor has already ruled upon that point.

The COURT: Do you object?

Mr. McKENNEY: I object.

The COURT: The objection is sustained.

22 Mr. MERILLAT: Exception noted, your honor.

By Mr. MERILLAT:

Q. Did Mrs. Boering ever authorize you to procure a free pass for her over the Chesapeake Beach railroad?

Mr. McKENNEY: That is also objected to.

The COURT: The objection is sustained.

Mr. MERILLAT: Exception noted, your honor.

By Mr. MERILLAT:

Q. Did Mrs. Boering ever assent to your waiving her right to a recovery from this company for negligence?

Mr. McKENNEY: I object to the question because I do not understand it.

By Mr. MERILLAT:

Q. Did Mrs. Boering ever, in any way, assent to your procuring transportation for her over this railroad and relieving the company from any liability therefor on the grounds of negligence?

Mr. McKENNEY: That is objected to.

The COURT: The objection is sustained.

Mr. MERILLAT: Exception noted, your honor.

The COURT: All of this, if it is material at all, ought to have been brought out on the examination-in-chief. This is re-examination.

Thereupon evidence was given on behalf of the plaintiffs tending to show that the pass upon which the female plaintiff was riding at the time of the accident had been issued to said plaintiff for value.

And thereupon, upon all the evidence hereinbefore set forth, which was all the evidence given by the respective parties, and which is hereby referred to and made part hereof, the plain-
23 tiff prayed the court to grant the following instructions, and the action of the court and of counsel upon each of said instructions so requested was as is hereinbelow set forth:

Plaintiff's Prayers.

1. If the jury find from the evidence that the plaintiff Mearlin G. Boering, while on the cars of the defendant, was injured by the negligence of the defendant, and *that the plaintiff was riding on a ticket from which value had been given*, then your verdict should be for the plaintiff, and you are instructed that the defendant is not exonerated from liability in any degree from damages occasioned by such negligence by reason of any circumstances or conditions with reference to the defendant railway company's compensation for transport*ati*ng the plaintiff.

Granted.

2. The jury are instructed that if they find that the plaintiff's husband, John D. Boering, and the defendant were in negotiation for advertising work, and that the defendant, because of the advertising work said John D. Boering was to do for defendant, agreed to and did give said John D. Boering separate passes for himself and his wife, and that Mearlin G. Boering was lawfully on the car of the defendant at the time of the accident, and never had seen nor knew, prior to the accident, of the contents of the pass or ticket which her husband showed to the conductor as entitling her to ride on defendant's road, then if you find that the defendant was negligent in the management of its road, and the plaintiff Mearlin G. Boering was injured in consequence of said negligence and without fault on her part, your verdict should be for the plaintiff, and you should
24 disregard the conditions on the back of the pass produced in evidence.

Overruled.

Exception noted by plaintiff separately and severally then and there upon the minutes of the court.

3. That if the jury shall find from the evidence that the plaintiff was injured by the negligence of the defendant while plaintiff was lawfully upon a train of the defendant railroad company, they are to find for the plaintiff whether she was traveling upon a free pass

or not, or whether such pass had or not on the back thereof a stipulation against liability arising from negligence or otherwise.

Overruled.

Exception noted by plaintiff severally and separately then and there upon the minutes of the court.

4. If the jury shall find in favor of the plaintiff, then in estimating damages you are to take into consideration the nature and extent of the injuries to the plaintiff and the pain attending thereupon and naturally incident thereto; the character and extent of her physical disability and the shock to her nervous system and results thereof resulting from such injuries, and return a verdict for what in money would be a fair recompense for the injuries received and suffering undergone by the plaintiff.

Granted.

Thereupon the court having instructed the jury in accordance with prayers numbered one (1) and — (4) above and having refused to instruct them in accordance with prayers numbered two (2) and three (3), to which refusal the plaintiffs then and there excepted, and the jury, having retired to consider of their verdict, returned a verdict for defendant.

25 Be it further remembered that each of the separate and several exceptions taken by counsel for the plaintiff to the rulings of the court during the progress of said trial — each of the exceptions taken by counsel for plaintiff to the refusal of the court to grant each of the prayers of the plaintiff hereinbefore set forth were so taken by counsel for plaintiff then and there, before the jury retired, separately and severally, and said exceptions were then and there, separately and severally, duly noted upon the minutes of the justice presiding at the trial, and counsel for the plaintiff then and there prayed the court, and now prays the court, to sign and seal this bill of exceptions, to have the same force and effect as if each of the said exceptions was separately and severally set forth in a separate bill of exceptions, and at the request of said counsel for the plaintiff the same is accordingly signed and sealed and made a part of the record in this cause, now for then, this seventh day of April, 1902.

HARRY M. CLABAUGH, *Justice.* [SEAL.]

EUGENE CARUSI & SONS,
CHARLES H. MERILLAT,
For Plaintiffs.

I have no objection to the above draft of bill of exception.

F. D. McKENNEY,
For Defendant.

26 UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 25, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 44219, at law, wherein John D. Boering *et ux.* are plaintiffs and The Chesapeake Beach Railway Company is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 16th day of April, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1207. John D. Boering *et al.*, appellants, *vs.* Chesapeake Beach Railway Company. Court of Appeals, District of Columbia. Filed Apr. 16, 1902. Robert Willett, clerk.